

## 1 VOIR DIRE EXAMINATION

2 BY MR. HONIG:

3 Q Mr. Cleary, who drafted your Testimony?

4 A The Testimony was drafted after a phone conversa-  
5 tion by Mr. Gottfried, I believe.

6 Q And you, you executed it on May 27, 1994?

7 A He sent me a copy of it. I made a number of  
8 changes. He then sent me a revision. I honestly don't remem-  
9 ber the date.10 Q Now, before you signed your Testimony did you  
11 either hear a tape recording or read a transcript or have  
12 related to you the contents of any interview that a law clerk  
13 of mine, Michael Blanton, might have had with any witness?

14 A No.

15 Q Were you aware of such interview? And the inter-  
16 view was with another witness by the name of Tom Lauher.

17 A No.

18 Q No. Did Mr. Lauher talk to you about your  
19 Testimony before you signed your Declaration?

20 A No, he did not.

21 MR. HONIG: Okay. I have no further voir dire for  
22 this witness. I do have some objections to some of the  
23 Declaration. Thank you. First, on page 4 -- I have no  
24 problem with one through three. On page 4, fifth line from  
25 the bottom, there is a sentence, "While KFUC-FM has been on

1 the air since the late 1940's, the Station did not really  
2 begin to market itself to listeners and advertisers until  
3 1983." I would move to strike that sentence because it's not  
4 within the scope of the witness's personal knowledge.

5 MS. SCHMELTZER: Well, I, I think it is within the  
6 scope of the witness's personal knowledge and Mr. Honig is  
7 free to ask questions about it.

8 JUDGE STEINBERG: Ms. Laden?

9 MS. LADEN: I don't see any problem with that  
10 sentence.

11 JUDGE STEINBERG: Objection is overruled. You can  
12 cross on that.

13 MR. HONIG: Actually, that's the only objection I  
14 had other than matters I can go into on cross.

15 JUDGE STEINBERG: Do you have any objection, Ms.  
16 Laden?

17 MS. LADEN: No, Your Honor.

18 JUDGE STEINBERG: Then Exhibit -- Church Exhibit 5  
19 is received.

20 (Whereupon, the document marked for  
21 identification as Church Exhibit  
22 No. 5 was received into evidence.)

23 JUDGE STEINBERG: Then the witness is available for  
24 cross. Mr. Honig?

25 MR. HONIG: Thank you.

## CROSS-EXAMINATION

BY MR. HONIG:

Q Mr. Cleary, turning first to page 4 of your statement, let me start with the sentence that I just asked about a moment ago. Do you have a basis or a source for, for this, for this statement?

A I believe I do, yes.

Q And what is that?

A I had been dealing with the station for two to three years prior to their making a decision, probably three years, prior to their making a decision to go commercial and had a very good feeling for the position of the station in the market, the attitude of the people at the station regarding their position in the market during that three-year period.

Q Now, when you say "dealing with," what was the nature of your dealings during -- before the station went commercial?

A I had contacted first management at the station and then people at the Synod to try to persuade them to consider making use of their commercial license.

Q Did you ever do a survey of listeners or a survey of advertisers of the station?

MS. SCHMELTZER: Objection.

WITNESS: No, I did not.

MR. HONIG: Okay. Did you ever conduct focus group

1 studies of listeners or advertisers of the station?

2 MS. SCHMELTZER: Objection. First of all, there  
3 were no advertisers on the FM station prior to --

4 MR. HONIG: I know.

5 MS. SCHMELTZER: -- the time it went commercial.  
6 Secondly, I don't know what time period you're talking about  
7 and I don't know what subject matter you're talking about.

8 MR. HONIG: At, at, at any --

9 JUDGE STEINBERG: Why don't you just -- if you can  
10 sharpen it up.

11 MR. HONIG: Sure.

12 BY MR. HONIG:

13 Q The station -- just so we can get this in the  
14 record so it's understandable, the year the station went  
15 commercial was what year?

16 A I believe 1983.

17 Q Okay. Now, your dealings with the station then  
18 began in 1981, is that right?

19 A Somewhere in there, yes.

20 Q Around 1981. Now -- and your dealings with the  
21 station in, in, in, in the role of, in effect, managing the  
22 National Sales continue today, is that right?

23 A That's a matter of semantics. I am now hired by  
24 KFUD as their National Sales Representative.

25 Q Okay. Now, from around 1981 when you started

1 | dealing with the station through January 1990, did you ever do  
2 | a -- an audience -- I'm sorry, the question is audience focus  
3 | group for the station, focus group study?

4 |       A       Did I personally?

5 |       Q       Do one or, or cause one to be done.

6 |       A       No, I did not.

7 |       Q       Or did you ever review the results of such a study?

8 |       A       I have reviewed results of such studies at a number  
9 | of radio stations both locally and nationally done. I have  
10 | certainly discussed with the station's management over the  
11 | years how to better access their audience.

12 |       Q       Okay. But you, you didn't cause to be done or  
13 | review a focus group study for, for this -- for listeners of  
14 | this particular station, is that right?

15 |       A       That's correct.

16 |       Q       Now, what about advertisers? Did you do or cause  
17 | to be done or review a focus group study of advertisers,  
18 | again, '81 till January 1, '90?

19 |       A       I think you have to define a focus group. When we  
20 | hired Tom Jackson to take over Sales for the radio station,  
21 | obviously a major part of his responsibilities was to get out  
22 | on the street and start talking to people and find out what  
23 | their perception of the radio station was. If you mean did we  
24 | get eight people in a room and hold what is formally referred  
25 | to as a focus group, no, we never did that, but we did a great

1 deal of fact-finding in terms of what the marketplace per-  
2 ceived KFUE as and how we could best generate an interest on  
3 their part in, in using the station as an advertising vehicle.

4 Q Okay. So, we'll know for, for, for the record, who  
5 is Tom Jackson?

6 A Tom Jackson was hired by Concert Music on the basis  
7 of a contract we signed with KFUE to handle both their local  
8 and national sales.

9 Q Okay. And he -- was he an employee of Concert  
10 Music or an employee of the station, "employee" meaning who,  
11 who, who -- whose name was on the check?

12 A He was a employee of Concert Music.

13 Q Okay.

14 (Off the record.)

15 (On the record.)

16 BY MR. HONIG:

17 Q Okay. Now, if you will take a look at page 5 of  
18 your declaration, paragraph 8 at the top, you state there  
19 "...KFUE-FM had to undergo a transformation of sorts. The  
20 selection and flow of classical music had to be optimized.  
21 The execution of announcer intros, extros and transitions had  
22 to be upgraded. The FM technical facility had to be  
23 upgraded."

24 Now, did you supervise those changes in the sta-  
25 tion's operations?

1           A       Did I "supervise" them? Not in the sense of that  
2 word, no.

3           Q       Did you closely observe them so that you were  
4 familiar with how those things were being done?

5           A       I think I was in the market often enough to have a  
6 feeling for what steps were being made and I was getting  
7 constant feedback from Tom as to how the station was handling  
8 the transition.

9           Q       Now, let's take these one, one a time. "The selec-  
10 tion and flow of classical music had to be optimized." When  
11 did that process begin and when was it completed to your  
12 satisfaction?

13          A       I would say the process began shortly after the  
14 transition to a commercial operation, and it is ongoing today  
15 as we speak.

16          Q       But when was it -- when did the bulk of that trans-  
17 formation of the selection and flow of classical music occur?  
18 Did it happen in a week or most of it a month or a year or  
19 five years?

20          A       It has been pretty much an evenly distributed  
21 change in, in philosophy and implementation throughout this  
22 entire 10-11 year period.

23          Q       It -- is your testimony that it's been occurring  
24 steadily at the same rate and that there has been no sudden  
25 shift that if -- that can be attributed to a particular moment

1 | when a decision was made to implement the new change in the  
2 | format or style?

3 |       A       I, I'm not sure I can answer that. I mean, my  
4 | sense from trips to the market and from New York is that it  
5 | has been an evolutionary process that continues. It started  
6 | modestly with the transition to commercial operation. And as  
7 | the station has gotten more and more comfortable with its role  
8 | as a commercial radio station, it continues.

9 |       Q       Okay. Now, what about this next sentence? "The  
10 | execution of announcer intros, extros and transitions had to  
11 | be upgraded." When was that process begun and has it been  
12 | completed, and if so when did it come to be essentially com-  
13 | pleted?

14 |       A       That's -- again, it all began with the decision,  
15 | you know, to go commercial. That -- may I -- can I explain  
16 | what I mean here in terms of intros and what, what --

17 |       Q       Please.

18 |       A       The way the station presents itself to its audience  
19 | on the air has a major impact on the way that audience ulti-  
20 | mately responds to the radio station in terms of rating ser-  
21 | vices, their awareness of the radio station, when somebody  
22 | calls them up on the phone and says who do you listen to. I  
23 | think that it's a much simpler thing to deal with than the  
24 | music flow itself, and I would say that probably the station  
25 | in the first couple of years got a better sense of identifying



1 | itself.

2 |           I mean, you know, you're only, you're only required  
3 | to identify yourself once an hour by the FCC. If you want  
4 | your audience to know who they're listening to you need to  
5 | tell them a lot more often than once an hour, and I think that  
6 | concept settled into the station's management and the Program  
7 | Director fairly early in the game. They needed to be more  
8 | aggressive about telling the audience who they were listening  
9 | to. They had to be a little perkier and brighter in the way  
10 | they would announce the pieces of music.

11 |           Again, it is a process that is never finished but  
12 | this process, compared to the music process, is -- I think  
13 | probably took a lot less time for the station to get a hold  
14 | of.

15 |       Q       Now, the next sentence is, "The FM technical  
16 | facility had to be upgraded." Could you describe the upgrade  
17 | and when did it begin and when was, was it completed and --  
18 | when was it completed?

19 |       A       I don't know that it's been completed. I do know  
20 | that it began shortly after they went commercial. One of the  
21 | specific problems was that the AM signal -- AM transmitter was  
22 | back-to-back with the FM transmitter through a wall and you  
23 | could actually hear the AM station bleeding onto the FM sta-  
24 | tion, and that they had -- that was something they needed to  
25 | do something about right away, obviously. In terms of -- I'm

1 not a technician. I'm a sales and marketing guy. I don't  
2 know the status of KFUD as a technical -- you know, from a  
3 scale of A to Z where it would stand today. I know that they  
4 have constantly attempted to, you know, upgrade the quality of  
5 their output. There are new studios. I couldn't honestly  
6 tell you when they put those in. I do know they dealt with  
7 the AM bleeding problem fairly expeditiously.

8 Q Okay. Now, if you go down a few lines on this  
9 page, you state that unlike in GMS in "...Washington, D.C.,  
10 the St. Louis advertisers had to be told what KFUD-FM's prod-  
11 uct was." What was KFUD-FM's product?

12 A Their product was their audience, essentially.

13 Q Okay. And --

14 A Now, that's -- I -- that's to an advertiser. You  
15 asked me -- I thought you asked me about --

16 Q I, I'm, I'm -- I've -- I'm comfortable with your  
17 answer. Now, go down to the end of that paragraph, page 5,  
18 last sentence of paragraph 8. "It is my understanding that  
19 KFUD-FM has through the years continued to look for sales  
20 people with a knowledge of classical music." First, let me  
21 ask you what years was -- are -- is -- does "through the  
22 years" refer to?

23 A That would be from the time I first got involved  
24 with them as a commercial station, '83, until today.

25 Q Okay. And what is -- what or who is the source of

1 | this understanding?

2 |       A       My dialogue over the years as their national repre-  
3 | sentative and as someone who talks to the management of the  
4 | station with some regularity in terms of their needs and  
5 | objectives.

6 |       Q       Forgive me. I, I didn't ask a very clear question.  
7 | Let me try it another way. Did some person tell you this?

8 |       A       No. I probably told them that, in terms of when  
9 | asked what kind of sales people should we be looking for.

10 |      Q       Okay. Now --

11 |      A       When they took over their Sales themselves.

12 |      Q       And, and that occurred in 1986, is that right?

13 |      A       Yes. Somewhere --

14 |      Q       And then is it your testimony that in 1986 you then  
15 | told them: you should look for these characteristics in a  
16 | sales person?

17 |      A       Essentially, yes.

18 |      Q       Okay. And what were the characteristics -- and  
19 | expand, if you would -- that you told them to, to look for in  
20 | 1986?

21 |      A       I would have given them the same advice I would  
22 | give any classical station today, which is you need someone  
23 | who can sell this unique product in a very difficult market-  
24 | place.

25 |      Q       Now, how many classical stations do you represent?

1           A       We represent 32.

2           Q       Are they all commercial?

3           A       They are all commercial.

4           Q       Typically, what percentage of advertising revenues

5 of a commercial classical station come from advertisers that

6 are associated closely with classical music, such as the

7 symphony, a ballet, an opera company, a specialized records

8 store, and so forth?

9           A       I don't think I could answer that question accu-

10 rately. It would vary dramatically from market to market.

11          Q       Do you know what that percentage was in St. Louis

12 approximately?

13                   MS. SCHMELTZER: In what year?

14                   BY MR. HONIG:

15          Q       In, in 1986.

16          A       I really don't remember. It probably would have

17 represented a much higher percentage for KFYO than, than it

18 would have for most other stations. I don't remember what the

19 numbers were specifically.

20          Q       Do you have a sense of what the range is for the

21 industry generally?

22          A       The percentage of local business that is culturally

23 derived?

24          Q       Yeah, and, again, please don't make reference to

25 names of particular stations. I know that's a trade secret.

1 I just want to get a range generally.

2 A I don't think that I can answer that question. I  
3 think that there would be a very wide range from market to  
4 market based on the, the aggressiveness of the local arts  
5 organizations, the cultural organizations. It is a signifi-  
6 cant component but probably not a dominant component for all  
7 of these stations.

8 Q Now, if you would turn to page 6 of your  
9 Declaration. You state, "We supported KFUD's efforts..."  
10 This is the last sentence in paragraph 9. "We supported  
11 KFUD's efforts to look for sales people who were comfortable  
12 with classical music, people who could talk credibly about the  
13 music." Would you describe the steps that you took to, to  
14 implement those efforts or to encourage those efforts?

15 A These -- I guess perhaps in hindsight -- efforts is  
16 not an -- as accurate a word. I mean, I am in ongoing dia-  
17 logue with all of the stations that I represent. After the  
18 station took its Sales responsibilities on itself, they look  
19 to Concert Music and to me specifically as a source of guid-  
20 ance, experience, whatever. And when we discussed sales and  
21 many aspects of sales, part of what we discuss was the kind of  
22 people, how did I find people, how did other stations find  
23 people, what kind of people could do the job.

24 Q With -- in 1986 when you had the transition, who  
25 were the people at the station to whom you gave this parting

1 advice? What are the names of the, the people?

2 A At this point I honestly don't remember who the  
3 General Manager -- I don't know whether Hall was there at that  
4 time when we -- when they took the Sales on themselves or not.  
5 Tom Jackson I think stayed a little while. And Tom had hired  
6 Jan Hutchinson, who was initially a Concert Music employee, as  
7 a Sales person and she stayed. And I honestly have no specif-  
8 ic memory of any dialogue with any of the --

9 Q Did you, did you --

10 JUDGE STEINBERG: Let me just see if that can be  
11 clarified. You had the dialogue but you can't remember what  
12 it was or have you no memory of having a dialogue?

13 WITNESS: No. I, I have no memory of a specific  
14 date and dialogue. I know that over the years I have had many  
15 conversations with the radio station, Your Honor. I don't --

16 JUDGE STEINBERG: About --

17 WITNESS: -- remember --

18 JUDGE STEINBERG: About --

19 WITNESS: About selling, marketing the radio  
20 station.

21 JUDGE STEINBERG: Or about hiring -- looking for  
22 sales people who were comfortable with classical music?

23 WITNESS: As part of an overall dialogue about how  
24 to sell the station better, yes.

25 JUDGE STEINBERG: So, you spoke with the people at

1 the station but today here and now you can't remember specif-  
2 ics of when you spoke to them and who you spoke to?

3 WITNESS: I can't remember --

4 JUDGE STEINBERG: Is that right?

5 WITNESS: -- who the General Manager was in '86.

6 JUDGE STEINBERG: Okay.

7 BY MR. HONIG:

8 Q Did you hire Jan Hutchinson?

9 A Pardon?

10 Q Did you hire Jan Hutchinson?

11 A Tom Jackson hired Jan.

12 Q Did you interview her?

13 A I did not.

14 Q Have you ever talked to her?

15 A Yes.

16 Q When did you first meet Jan Hutchinson?

17 MS. SCHMELTZER: I'm going to object because this  
18 really gets into a potential rebuttal area and it's not rele-  
19 vant to Mr. Cleary's Testimony.

20 MR. HONIG: No, Jan Hutchinson's name is spoken of  
21 in paragraph 8 of Mr. Cleary's Testimony --

22 MS. SCHMELTZER: Right.

23 MR. HONIG: -- at the bottom. And the witness just  
24 volunteered her name in response to another question.

25 JUDGE STEINBERG: I'll, I'll let you ask the

1 question.

2 MR. HONIG: Okay.

3 JUDGE STEINBERG: Now, I know that there are cer-  
4 tain things concerning Jan Hutchinson in the rebuttal case,  
5 but I haven't read them. So, why -- do you want to --

6 MR. HONIG: Okay.

7 JUDGE STEINBERG: Why don't you repeat the ques-  
8 tion.

9 BY MR. HONIG:

10 Q When did you first meet Jan Hutchinson?

11 A I honestly don't remember.

12 Q Were you involved in, in any way in the decision to  
13 hire her?

14 A No. I --

15 Q Now, you stated that she had a concert music back-  
16 ground?

17 A I don't believe I ever stated that.

18 Q I'm sorry. Then I'm, I'm, I'm maybe --

19 A She was a Concert Music Broadcasting, Inc., employ-  
20 ee initially.

21 Q Okay. And the source of that information to you  
22 was whom?

23 MS. SCHMELTZER: Wait a minute. The source of what  
24 information?

25 MR. HONIG: Who, who told you that she was a



1 Concert Music employee.

2 MR. GOTTFRIED: That she worked for him?

3 WITNESS: I signed the paychecks.

4 MR. HONIG: Okay. Now, when is the last --

5 JUDGE STEINBERG: Okay. let me just caution Mr.  
6 Gottfried. If you have an objection --

7 MR. GOTTFRIED: I'm sorry, Your Honor.

8 JUDGE STEINBERG: -- state the objection, but you  
9 made a little comment which could be interpreted as coaching  
10 the witness. So, let's, you know, keep the legal objections  
11 legal and, and not factual. I, I want to hear the testimony  
12 from the witness.

13 MR. HONIG: When is the last time you spoke with  
14 Jan Hutchinson?

15 WITNESS: I really don't know. I'm sure it was  
16 sometime during the period that she was at the radio station,  
17 but I couldn't tell you more than that.

18 MR. HONIG: Did -- give me just one moment, Your  
19 Honor.

20 JUDGE STEINBERG: Sure.

21 MR. HONIG: I think I just have one, one last  
22 question. Have you over the, over the last couple months  
23 spoken with any of the NAACP's witnesses in this case?

24 WITNESS: I --

25 JUDGE STEINBERG: Just -- how does he know who they

1 are?

2 MS. SCHMELTZER: Right.

3 MR. HONIG: Let me provide you with an index to our  
4 direct case exhibits. This is just the first page that pro-  
5 vides the names. This is actually roman numeral i of our  
6 direct case.

7 JUDGE STEINBERG: Why don't you just -- if you  
8 don't -- if Ms. Schmeltzer doesn't have any problem --

9 MS. SCHMELTZER: I do have an objection. I think  
10 it's irrelevant.

11 JUDGE STEINBERG: Well, let's get the question.  
12 Why don't you stand up here and point out to the witness the  
13 names that you want him to look at.

14 MR. HONIG: Sure. You see on each of these it  
15 says: Declaration of so-and-so. And it's these names on 1  
16 through 11 that I wanted to call your attention to.

17 JUDGE STEINBERG: Just why don't you review those  
18 names. And the question is within the last month or two have  
19 you spoken with any of those people?

20 WITNESS: I -- the -- no, I have not.

21 MR. HONIG: I have no further questions.

22 JUDGE STEINBERG: Ms. Laden?

23 MS. SCHMELTZER: The Bureau had not requested  
24 cross-examination.

25 JUDGE STEINBERG: It's true but I'll allow them to

1 cross, given their role.

2 MS. LADEN: My questions are questions that arose  
3 as a result of Mr. Honig's cross-examination.

4 CROSS-EXAMINATION

5 BY MS. LADEN:

6 Q Mr. Cleary, you testified that you had an employee  
7 by the name of Jan Hutchinson. What was her position with  
8 your company?

9 A She was hired by Tom as a local Sales person for  
10 KFUD.

11 Q Did she do sales work for any other station?

12 A At the same time?

13 Q Yes.

14 A As far as I know she was working exclusively for  
15 KFUD.

16 Q But she was in, in your payroll?

17 A Right.

18 Q But working exclusively on the KFUD Sales --

19 A Right.

20 Q Now, did there, did there come a time when she was  
21 transferred to KFUD's payroll?

22 A Yes.

23 Q And when was that?

24 A That would have been at the termination of our  
25 three-year contract with the station, which would have been

1 late '86, I think.

2 Q And why was she transferred to KFUD?

3 A The word "transferred" is not really accurate here.  
4 We closed down our St. Louis sales operation at the end of the  
5 contract with KFUD. Tom went on to other things and the  
6 station hired Jan as their Sales person at that point in time.

7 Q Do you know whether there were other people on your  
8 payroll, sales people, that were hired in a similar way by  
9 KFUD at that time?

10 A To my knowledge no, there weren't. She was the  
11 only one. There was only one person.

12 Q There was only one person in your company that was  
13 doing sales for KFUD?

14 A Tom Jackson and Jan. There was no one else. We  
15 never hired a second sales -- Tom was a manager, selling  
16 manager but a manager. Jan was the only sales person we  
17 hired, and, and then our contract ran out.

18 Q Do you represent any stations other than classical  
19 music format stations?

20 A We have a co-owned situation in New York and Los  
21 Angeles and we represent the sister station of the FM  
22 classical. Coincidentally, they are both in what is referred  
23 to as the "nostalgia" format.

24 Q Now, you testified earlier that you are a KFUD  
25 Sales Rep, National Sales Representative presently. How are

1 you compensated for that service?

2 A We are on a commission, a sales commission.

3 Q In other words, a percentage of the national sales  
4 for KFUD?

5 A That's correct.

6 Q Now, isn't it a fact that if KFUD were to lose its  
7 license there would be a detrimental effect on your business?

8 A If KFUD ceased to be, for whatever reasons, a  
9 classical radio station or if I were fired by a radio station,  
10 then clearly that would affect revenue growth of the company.

11 MS. LADEN: Thank, thank you, Mr. Cleary. I have  
12 no further questions, Your Honor.

13 MR. HONIG: Actually, the -- forgive me. I've made  
14 a mistake. I did have one other question that I realize I  
15 neglected to ask. And if I may be taken out of turn could I  
16 ask that one question?

17 MS. SCHMELTZER: Well, I object. Mr. Honig had his  
18 chance.

19 JUDGE STEINBERG: What's, what's the question?  
20 Let's see how important it is.

21 MR. HONIG: The question is, is this, and I'll just  
22 pose it, the -- inasmuch as you consult 30-some-odd classical  
23 stations, have you ever heard of a commercial classical sta-  
24 tion having difficulty identifying or hiring African-  
25 Americans?

1 MS. SCHMELTZER: I'm going to object because it's,  
2 it's speculative. It doesn't concern KFUD and I don't think  
3 it's relevant testimony.

4 JUDGE STEINBERG: Well, I'm going to have -- I'm  
5 going to sustain the objection because you surely should have  
6 asked it before and it is, it is speculative.

7 I'm, I'm thinking. Restate it.

8 MR. HONIG: The question is inasmuch as the witness  
9 has -- consults 34 commercial classical stations --

10 JUDGE STEINBERG: Thirty-two.

11 MR. HONIG: Thirty-two? Has he ever, has he ever  
12 heard of any commercial classical station having difficulty  
13 attracting or hiring African-Americans? He may be the only  
14 witness in the country --

15 JUDGE STEINBERG: Well, for --

16 MR. HONIG: -- who knows the answer.

17 JUDGE STEINBERG: -- for what -- any particular  
18 position?

19 MR. HONIG: Let me ask it expansively because it,  
20 it may -- that may be just a yes or no question.

21 JUDGE STEINBERG: I'm going to revise my ruling and  
22 I'm going to allow it. I'm going to allow it. What -- do  
23 you, do you have a question in mind?

24 WITNESS: I do, and it's a very simply answer. In  
25 the 17 years I've been working with any number of classical

1 radio stations the question has simply never come up.

2 JUDGE STEINBERG: Okay.

3 MR. HONIG: No further questions.

4 MS. SCHMELTZER: I have one question on redirect.

5 REDIRECT EXAMINATION

6 BY MS. SCHMELTZER:

7 Q If, if you would look -- I want to draw your atten-  
8 tion to a sentence that Mr. Honig asked you about, at least I  
9 think it was this sentence. It's paragraph 8. Do you have  
10 your Testimony? The sentence begins -- it's about midway down  
11 the paragraph and it begins, "Throughout the 1980's..." And  
12 I, I'd like to ask you to read the entire sentence so that you  
13 have a framework here.

14 A Throughout the 19--

15 Q No, I'm sorry. You can read it to yourself.

16 A Oh. I always do what I'm told. Okay.

17 Q Okay. Now, what exactly is the product that's  
18 referred to there when it says "...the focus of KFUE-FM's  
19 sales effort was on marketing a new product..." What product  
20 were you talking about?

21 A The commercial availability -- every radio station  
22 has essentially two marketplaces they need to serve. One is  
23 the audience that listens to the radio station. The other is  
24 potential advertisers. KFUE as a commercial entity did not  
25 exist in St. Louis. The product referred to here is the

1 commercial availability on KFUD that hadn't existed before but  
2 now existed and needed to be taken out and marketed to people  
3 who had never had it presented to them before.

4 Q Is that the commercial availability of, of KFUD's  
5 classical music? Is that what you're referring to?

6 JUDGE STEINBERG: No. The, the problem is the  
7 sentence says, the way I read the sentence, the product seems  
8 to be classical music. And, and now -- and you've testified  
9 here that the product is commercial availability. Obviously  
10 that's, that's what radio stations have to sell, commercials.  
11 They -- so audience is advertisers.

12 WITNESS: Right. But --

13 JUDGE STEINBERG: They want to attract the audienc-  
14 es by programming -- they want to attract specific audiences  
15 by programming in specific ways. Is that right?

16 WITNESS: Exactly correct, Your Honor. But if you  
17 have never -- if as a local retailer or advertising agency  
18 person you have never had -- and as the only entity in St.  
19 Louis playing this music there would have been no reason for  
20 anybody to ever come to you before with another classical  
21 presentation and, you know, you understand as a retailer why  
22 you want to talk to the country-western audience or the rock-  
23 and-roll audience or KMOX's audience. But KFUD in the minds  
24 of the marketplace, the advertising marketplace, had never  
25 been presented to anybody. And it -- so, in that sense it was



1 an entirely new product.

2 Now, defining the product is a little tough, but  
3 what you're really talking about is the -- offering a new  
4 audience in the -- for advertising purposes. It's always been  
5 there, but now it's being offered for the first time to an  
6 advertiser who doesn't know anything about it, has never had  
7 it presented to him before, and who doesn't understand why it  
8 costs more than the other radio stations with similar sized  
9 audiences. And, and, you know, that's the hurdle that we have  
10 to overcome every day, essentially, in, in my business and in  
11 the business of all these radio stations.

12 MS. SCHMELTZER: I have nothing further. Thank  
13 you.

14 MR. HONIG: I don't have any problem with, with  
15 that at all.

16 JUDGE STEINBERG: Ms. Laden?

17 MS. LADEN: (Shakes head no.)

18 JUDGE STEINBERG: Okay. Mr. Cleary, you're ex-  
19 cused. Thank you so much for coming and --

20 WITNESS: Thank you very much.

21 JUDGE STEINBERG: -- testifying. I appreciate it.

22 WITNESS: Thank you.

23 JUDGE STEINBERG: Has he been informed of the  
24 sequestration?

25 MS. SCHMELTZER: Yes, Your Honor --